REMARKS

In the Final Office Action[1], the Examiner rejected claims 1-5 under 35 U.S.C. §101; rejected claims 1-5 and 9 under 35 U.S.C. § 112, second paragraph; rejected claims 1-5 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,873,071 to Ferstenberg et al. ("*Ferstenberg*") in view of U.S. Patent No. 5,426,281 to Abecassis ("*Abecassis*"); and rejected claims 6-8 under 35 U.S.C. § 103(a) as being unpatentable over *Ferstenberg*; and rejected claim 9 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,873,071 to Conklin et al. ("*Conklin*").

Applicants propose to amend claims 1 and 9. Claims 1-9 would remain pending upon entry of this Amendment.

The Examiner rejected claims 1-5 under 35 U.S.C. § 101 because claim 1 "recit[es] a method step of actually receiving information from the escrow agent computer" and "the term 'a physical distribution agent' . . . appears . . . [to] include a person" (Final Office action at page 2).

Although Applicants disagree, to expedite prosecution, Applicants have amended independent claim 1 to recite a "content distribution intermediary system configured for receiving" and a "physical distribution agent computer" instead of a "content distribution intermediary system receiving" and a "physical distribution agent," respectively (emphases added). Accordingly, Applicants respectfully request that the rejection of claims 1-5 under 35 U.S.C. § 101 be withdrawn.

[1] The Final Office Action may contain a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicants decline to automatically subscribe to any statement or characterization in the Office Action.

The Examiner rejected claims 1-5 and 9 under 35 U.S.C. § 112, second paragraph, because the claims "fail[ ] to particularly point out and distinctly claim the subject matter which applicant regards as the invention" (Final Office Action at page 3).

The Final Office Action states that claim 1 recites a method step (page 3). As set forth above, Applicants have amended independent claim 1 to recite a "content distribution intermediary system configured for receiving" instead of a "content distribution intermediary system receiving."

The Final Office Action further states with regards to claim 1 that "it is not clear if an escrow management server is positively recited" (page 3). Although Applicants disagree, to expedite prosecution, Applicants have amended independent claim 1 to recite a "content distribution system comprising: . . . an escrow system management server" before reciting "an escrow agent computer configured for receiving escrow processing information from the escrow system management server."

The Final Office Action states that for claim 9 it is not clear whether "the computer" refers to "an escrow agent computer" or "a computer" (pages 3-4). Although Applicants disagree, to expedite prosecution, Applicants have amended independent claim 9 to not recite "an escrow agent computer."

Accordingly, Applicants respectfully request withdrawal of the rejection of claims 1-5 and 9 under 35 U.S.C. § 112, second paragraph.

Applicants respectfully traverse the rejection of claims 1-5 under 35 U.S.C. §103(a) as being unpatentable over *Ferstenberg* and *Abecassis*. A *prima facie* case of obviousness has not been established.

Amended independent claim 1 recites a content distribution system, including, for example,

> a content distribution intermediary system connected to the seller information processing apparatus, the buyer information processing apparatus, the physical distribution agent, and the escrow agent computer, the content distribution intermediary system configured for receiving the money transfer completion message sent from the escrow agent computer, wherein the content distribution intermediary system comprises:
>
> input means for receiving first media content information from the seller information processing apparatus;
>
> . . .
>
> wherein the input means is further operable to receive a delivery status of the media content from the physical distribution agent computer.

Ferstenberg and *Abecassis* do not teach or suggest at least these elements of claim 1.

Ferstenberg discloses a "computer system[ ] that facilitates an automatic exchange of commodities between users according to the user's goals" (col. 1, lines 6-10). The users are "represented by electronic agents . . . that interact with an electronic intermediary . . . [and] the agents conduct negotiations by exchanging electronic messages with the intermediary" (col. 12, lines 37-50). *Ferstenberg* discloses, "several classes of client systems . . . includ[ing] general clients 79, limited clients [80], trading workstations and further client types" (col. 39, lines 26-39). *Ferstenberg* does not disclose any other parties that are involved except for the users (buyers and sellers) and the intermediary (*see* Fig. 4). Thus, *Ferstenberg* does not disclose or even suggest a "content distribution intermediary system connected to the seller information processing apparatus, the buyer information processing apparatus,

the physical distribution agent computer, and the escrow agent computer," as recited in claim 1 (emphasis added).

The Final Office Action alleges that the claimed physical distribution agent computer "is not even related in any way to anything else claimed and appears to be just another computer connected to the network" (page 8). This allegation is not correct. Claim 1 further recites "the content distribution intermediary system comprises: . . . input means [that] is further operable to receive a delivery status of the media content from the physical distribution agent computer." None of the client systems or computers disclosed by *Ferstenberg* teach or even suggest "a physical distribution agent computer" that is connected to a "content distribution intermediary system" and from which the "content distribution intermediary system" receives "a delivery status of the media content," as recited by claim 1.

Furthermore, the Final Office Action alleges that the "data to be received has nothing to do with the structures of the overall system that actually receives the data" and suggests that the difference in the data transmitted "does not result in structural differences from that of the prior art" (page 5 and *see also* pages 6 and 7). This allegation is also not correct.

Ferstenberg discloses, an "intermediated exchange . . . . Examples of items traded include intangibles such as securities (stocks, bonds, and options) . . . as well as tangibles, such as copper or soy beans" (col. 1, lines 16-22). *Ferstenberg* further discloses, "[t]his invention provides a computer system . . . for intermediated exchange that is capable of facilitating exchanges of multiple commodities" (col. 2, lines 59-63). The system in *Ferstenberg* does not actually conduct the physical exchange (e.g.,

sending copper from seller to buyer through the system) or track the actual exchange of commodities. The system in *Ferstenberg* merely transmits information about the commodities. Accordingly, as set forth above, *Ferstenberg* does not teach or suggest "a physical distribution agent computer" that is connected to a "content distribution intermediary system," and from which the "content distribution intermediary system" receives "a delivery status of the media content," as recited by claim 1. A structure of a system in *Ferstenberg* that merely transmits information about intangible and tangible commodities does not teach or suggest the claimed system that facilitates the actual exchange of data that is media content, as recited in claim 1.

Abecassis fails to cure the deficiencies of *Ferstenberg*. *Abecassis* discloses a purchasing center that "sends the funds to an escrow agent. The escrow agent, in turn, pays the vendor the wholesale price for the goods" (col. 2, lines 23-27). Even assuming purchasing center, vendor, and escrow agent in *Abecassis* correspond to the claimed buyer information processing apparatus, seller information processing apparatus, and escrow agent computer, respectively, which Applicants do not concede, an escrow agent that communicates with both the purchasing center and the vendor directly in *Abecassis* does not teach or suggest "content distribution intermediary system connected to the seller information processing apparatus, the buyer information processing apparatus, the physical distribution agent computer, and the escrow agent computer," as recited in claim 1 (emphasis added). The escrow agent in *Abecassis* is the intermediary between the purchasing center and the vendor. In contrast, claim 1 recites that the escrow agent is connected to the content distribution intermediary system, and he content distribution intermediary system is the one connected to the

buyer information processing apparatus and the seller information processing apparatus. *Abecassis* also does not teach or suggest a "physical distribution agent computer," as recited in claim 1.

Accordingly, *Ferstenberg* and *Abecassis* fail to render the subject matter recited in claim 1 obvious. Claims 2-5 depend from independent claims 1, and are thus also allowable.

Applicants respectfully traverse the rejection of claims 6-8 under 35 U.S.C. §103(a) as being unpatentable over *Ferstenberg*. A *prima facie* case of obviousness has not been established.

Amended independent claim 6 recites a method including, for example,

> a content distribution intermediary system comprising a computer . . .
>
> generating, by the computer, escrow processing information about the purchase-and-sale contract for the media content for processing by an escrow agent, wherein the escrow processing information comprises title of the media content, name of buyer, name of seller, price, and date;
>
> transmitting, by the computer, the escrow processing information to the escrow agent, wherein the escrow agent tracks status of payment for the media content based on the escrow processing information and generates a money transfer completion message based on the status and the escrow processing information; [and]
>
> receiving, by the computer, a delivery status of the media content from a physical distribution agent.

Ferstenberg does not teach or suggest at least these elements of claim 6.

The Final Office Action states, "with respect to media content . . . one of ordinary skill in the art at the time the invention was made would have found it obvious to use the system of *Ferstenberg* for the sale and purchase of" media content (pages 13-14). As

set forth above, this is not correct. A structure of a system in *Ferstenberg* that merely transmits information about intangible and tangible commodities does not teach or suggest facilitating the actual exchange of data that is media content, as required by claim 6.

The Final Office Action seems to admit that *Ferstenberg* does not disclose the generating and transmitting of claim 6 (page 13). The Final Office Action states, "with respect to the limitation of generating and transmitting 'escrow processing information', it is well known in the art of contracts . . . . The Examiner continues to take official notice of this fact" (page 15). The Final Office Action further states, "with respect to the 'escrow processing information', information such as identification of the item that is being purchased . . . are all types of data that one of ordinary skill in the art would find obvious to use" (page 14).

Applicants traverse the Examiner's taking of "Official Notice," noting the impropriety of this action, as the Federal Circuit has "criticized the USPTO's reliance on 'basic knowledge' or 'common sense' to support an obviousness rejection, where there was no evidentiary support in the record for such a finding." MPEP § 2144.03. Applicants submit that "[d]eficiencies of the cited references cannot be remedied by ... general conclusions about what is 'basic knowledge' or 'common sense.'" In re Lee, 61 USPQ2d 1430, 1432-1433 (Fed. Cir. 2002), quoting In re Zurko, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001).

Should the Examiner maintain the rejection after considering the reasoning presented herein, Applicants submit that the Examiner must provide "the explicit basis on which the examiner regards the matter as subject to official notice and allow

Applicants to challenge the assertion in the next reply after the Office action in which the common knowledge statement was made," or else withdraw the rejection. See MPEP § 2144.03.

Here, the Examiner appears to rely upon alleged what is "well known in the art." As stated in M.P.E.P. § 2144.03, such assertions are not proper because the Examiner has not demonstrated that the asserted facts are well-known or capable of instant and unquestionable demonstration as being well-known in the art. Therefore, the rejection of claim 6 is improper.

Even assuming that "escrow accounts" and "escrow processing information" are well known, which Applicants do not concede, this information does not teach or suggest "generating . . . escrow processing information about the purchase-and-sale contract for the media content for processing by an escrow agent, wherein the escrow processing information comprises title of the media content, name of buyer, name of seller, price, and date; [and] transmitting . . . the escrow processing information to the escrow agent, wherein the escrow agent tracks status of payment for the media content based on the escrow processing information," as recited in claim 6 (emphasis added). The Final Office Action fails to demonstrate that the use of "escrow accounts" and "escrow processing information" for media content is either well known or obvious. As set forth in the previous response, the use of escrow accounts when sellers are selling various items does not teach or suggest use of an escrow agent for a media content transaction.

Still further, *Ferstenberg* does not teach or suggest an intermediary that receives information from a seller and a buyer and then "generating escrow processing

information . . . and transmitting the escrow processing information to the escrow agent," as recited in claim 6. *Ferstenberg* also does not teach or suggest "receiving, by the computer, a delivery status of the media content from a physical distribution agent," as recited in claim 6 (emphases added).

Accordingly, *Ferstenberg* fails to render the subject matter recited in claim 6 obvious. Independent claim 7, though of different scope than claim 6, is allowable for at least similar reasons as claim 6. Claim 8 depends from independent claim 7, and is thus also allowable.

Applicants respectfully traverse the rejection of claim 9 under 35 U.S.C. §103(a) as being unpatentable over *Conklin*. A *prima facie* case of obviousness has not been established.

Independent claim 9, as amended, recites a method including, for example,

> determining . . . whether the buyer information processing apparatus requested a clip representative of the media content;
>
> generating . . . data to output the clip through the first web page, when the clip is requested; and
>
> sending . . . the clip to the buyer information processing apparatus.

Conklin fails to teach or suggest at least these elements of claim 9.

The Final Office Action admits that *Conklin* does not disclose "that it is determined whether or not the buyer apparatus has requested a clip of the media content, and generating and sending the clip to the buyer," as required by claim 9 (page 19). The Final Office Action alleges a "buyer requesting a clip of the media content (determining step) and sending to the buyer . . . is considered to be obvious due

to the fact that it is common sense and commonplace in commerce to allow the buyer to see what it is they may want to purchase . . . with respect to movies and TV shows (media content), [and thus] it is very well know that 'clips' are produced so that those possibly interested in seeing the movie or the TV show can get idea of the overall content is going to be" (Office Action at pages 21-22). This allegation is not correct.

As set forth in the previous response, requesting to see what it is a buyer may want to purchase does not teach or suggest "request[ing] a clip representative of the media content," as recited in claim 9.

Furthermore, the Final Office Action seems to be describing trailers. The Final Office Action further allege a "trailer is a clip. There is no difference" (page 24). This is not correct. A trailer is a promotional film or advertisement that, as the Final Office Action states, needs to be produced. Although a trailer may include clips, it is not a clip. A clip does not need to be produced. Trailers were traditionally shown before movies in movie theaters and on TV as advertisements. Potential viewers did not request to see a trailer. Producing a trailer for a movie or a TV show to show the trailer to potential viewers of the movie or the TV show does not teach or suggest "determining . . . whether the buyer information processing apparatus requested a clip representative of the media content" and "generating data, to output the clip (representative of the media content) through the first web page, when the clip is requested," as recited in claim 9.

Accordingly, *Conklin* fails to render the subject matter recited in claim 9 obvious.

In view of the foregoing remarks, Applicants respectfully request entry of this Amendment After Final, reconsideration of this application, and the timely allowance of

the pending claims. If the Examiner believes a telephone conference would be useful in resolving any outstanding issues, the Examiner is kindly invited to contact the undersigned at (202) 408-4320.

Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account 06-0916.

Respectfully submitted,

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